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Shteryo Nozharov

University of National and World Economy

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"ECONOMIC GROWTH AND THE REFORM OF THE JUDICIAL SYSTEM OF BULGARIA IN THE PERIOD 2000-2015 (vision for a new measurement model)"

Asst.Prof. Shteryo Nozharov, Ph.D.,

**Department of Economics, University of National and World Economy, Bulgaria,
e-mail: nozharov@unwe.bg**

Abstract: The publication proposes a concept for new model for evaluation of the “reform of the judicial system”, different from those applied by the World Bank and the International Monetary Fund where the economic growth rate of each country is measured. Their models, based on performance indicators, examine the “reform of the judicial system” as constant and floating in time, evaluated in certain periods of time. This fact obstructs the identification of the relative legislative miscarriages of every single judicial reform. The new model, proposed by the current study, discusses the possibilities how the presence of a single reform of the judicial system could be identified by a group of indicators. In this way it can be determined both the effectiveness of the reform of the judicial system and the government will for reform during its mandate. The model is especially useful to be implemented by countries with transitional economies when evaluating the correlation between the reform of the judicial system and the economic growth. As an example, in the current study the model is applied to the judicial system of Bulgaria.

Keywords: reform of the judicial system, economic growth, econometric analysis;

JEL Codes: K10, O11, O52;

Introduction

The economic growth during the post-recession recovery period as a result of the global economic crisis in 2008 is an issue of great importance for both the scientists and the national governments.

After the Bulgarian accession to the EU in 2007, one of its main objectives is convergence with the economies of the most developed member-states or at least reaching the average economic level for the EU. Till the end of 2015 this goal has not been achieved yet.

Is it possible the effective reform of the judicial system to be the solution of that problem? What are the correlations and trends between reform of the judicial system and the economic growth of Bulgaria?

The main objective of the study is to analyze if there is any relationship between the reforms of the judicial system and the economic growth of Bulgaria (transitional economies) and if it is true, to examine what the possibilities for econometric modeling of the

forthcoming (announced by the government) reform of the judicial system are in order positive economic growth to be reached.

The object of the research is the economic growth and its **subject** is the reforms of the judicial system and their macroeconomic implications.

The restrictions of the study evolved from the fact that it is a conference paper and is limited of size.

The main thesis of the research is that till now the implemented models for evaluation of the effectiveness of the reform of the judicial system do not provide the necessary information so as to be determined the impact of these reforms on the economic growth of Bulgaria or countries with transitional economies.

In order the main thesis to be proved, the following **scientific assignments** are solved:

1. To define the term “reform of the judicial system” in a way an econometric model to be applied;
2. To indicate the dynamics of the reforms of the judicial system in Bulgaria;
3. To analyze the correlations between reforms of the judicial system and the economic growth of Bulgaria.

1. Definition of the term “reform of the judicial system” and dynamics of these reforms in Bulgaria

What from economic perspective does generate the necessity to examine the concept “reform of the judicial system”? Properly functioning judicial system creates certainty and predictability for the business which results in better investment activity and new jobs.¹

Opposite, improperly functioning judicial system needs to be reformed in order to function effectively. However, the continuous reforms from economic perspective lead to unpredictability for the business and impact negatively on its economic activity.

After analyzing the existing publications on the problem, according to the author, there is no relevant definition of the term -”reform of the judicial system” that allows econometric calculations.

Most of the publications put the accent on the strategic goals of the reform of the judicial system and on the indicators for their assessment. See Esposito G., S. Lanau and S. Pompe (2014).² According to them the concept reform of the judicial system is related to the

¹ World Bank, (2015), “Productivity in Bulgaria: Trends and Options”, Document of the World Bank,p.93

² Esposito G., S. Lanau and S. Pompe, (2014) “Judicial System Reform in Italy-A Key to Growth”//, IMF Working Paper, WP/14/32, International Monetary Fund

number of indicators that determine the reasons of both its implication and its effectiveness. The main indicators used are: duration of the trials and judicial procedures; rate of the court fees; number of the various interpretative verdicts of the Supreme Court on equal cases; number of lawyers per capita; number of lawyers who have the right to appear at the Supreme Court; number of clerks per magistrate. These indicators do not take into account the nature of the reform and its presence but describe the repercussions of it.

Such indicators are also used by the World Bank in order to evaluate the reform of the judicial system in Bulgaria.³ The current research, similarly to the other studies, applies indicators that examine the effectiveness of the judicial reform but not its nature. Such indicators are: trust of companies and individuals in the judicial system; funding of the judicial system; number of judges and clerks per capita; duration of the judicial procedures and trials; workload of the judges by regions and ranks; fragmentation of the systems for verdicts management; number of various verdicts of Courts concerning equal cases; surveys for corruption in the judicial system among representatives of the business, individuals and lawyers; presence and effectiveness of a software for accidental distribution of legal cases; rate of the judicial services fees.

The main disadvantage of the judicial reform in this aspect is that many strategic effects as a result of the reform are not observed. For example the report of the World Bank said that the judicial fees in Bulgaria are low and this result in overloading of Courts and that is why these fees need to be increased. At the same time however, the World Bank in its report ascertains that the number of magistrates and clerks per capita in Bulgaria is much higher than the average level (Bulgaria ranks 4th of this indicator in Europe). The right strategic conclusion in this aspect is that it is needed a reform of the Judiciary System Act about the provisions on required degree of education, post-graduate qualification and professional experience of magistrates in their initial nomination and subsequent promotion. According to the author, the problem does not due to the low judicial fees but to the low qualification of magistrates. In this aspect, the reform of the judicial system will be an essential amendment of the Judiciary System Act only if it is oriented towards the provisions on initial nomination and subsequent promotion of magistrates. So it is not necessary the judicial fees to be increased because this act will reduce the access to justice.

³ World Bank, (2015), "Productivity in Bulgaria: Trends and Options", Document of the World Bank, p.93

According to Stephenson (2007) the judicial system has three “dilemmas”.⁴ The first one is the “limitation of resources” in order to be achieved the goals of the judicial reform and their alternative use. The second one corresponds with the “incentive compatibility” which means that judges and clerks should be motivated to effectively carry their functions out and individuals will trust the Court. The third one is the risk of “partial reform” or “reciprocal independence between legal regulations and institutions”. This type of analysis of the judicial reform is functional but not definite. It measures again the effectiveness of the reform but not identifying its nature.

Dam (2006) examined the effectiveness of the judicial system through the analysis of separate determinants, such as: presence of “formalism” in solving judicial cases; average duration of trials and judicial procedures; assessment of companies and individuals trust in the judicial system; funding of the judicial system; wages and workload of magistrates; number of lawyers per capita; functionality of the Supreme Court and access to justice; impartiality and independence of Court in controlling the legal regulations issued by the government; prestige of the judicial institution and its impact on magistrates ‘competence and activity’.⁵

The main disadvantage of the aforementioned publications is that they discussed the judicial reform as floating in time which could be assessed in certain periods of time. If it is true, it is difficult to examine which legislative amendments or single strategic and complex activities improve or deteriorate the effectiveness of the judicial system. Practically this means to identify the disease without knowing which drugs help the patient and which harm him/her.

The author considers that “the reform of the judicial system” could be specified also as a single act of planned strategic and complex amendments of a group of legislative acts (judiciary system structure acts; procedure acts and substantive acts) that results in direct and long-term amendment in the functioning of the judicial system.

The main question of the current study is which amendments and in which legislative acts when they are generally accomplished even if they are a single act, could be considered as a reform of the judicial system. In this way the term “reform of the judicial system” will not be mistaken with the term “amendment of the legislative system”.

As a result a distinction between regular amendment of the legislation and reform of the judicial system could be made. In this regard it can be specified when the government and the

⁴ Stephenson, M., "Judicial Reform in Developing Countries: Constraints and Opportunities" in *Beyond Transition* (Francois Bourguignon & Boris Pleskovic eds., Oxford University Press, 2007).

⁵ Dam, Kenneth W., (2006), *The Judiciary and Economic Development* (October 2006). U Chicago Law & Economics, Olin Working Paper No.287;

parliament have the will to reform the judicial system and when they only imitate such reform by adopting insignificant amendments of the legislation. The latter is of great importance for countries with transitional and developing economies.

Only when the presence of legislative amendments, acting as a reform of the judicial system is identified, then the presented indicators by the other authors (Dam & Stephenson) could be applied in order to assess the effectiveness of this reform.

For the needs of the current research, the author has worked the following model out for identifying a “reform of the judicial system” which model will be used for Bulgaria. He considers that the presence of a reform of the judicial system could be proved by the amendment of the following legislative acts:

1. Judiciary System Structure Acts:

- Constitution of The Republic of Bulgaria
- Judiciary System Act

2. Main Procedure Acts:

- Code of Civil Procedure
- Penal Procedure Code
- Administrative Procedure Code
- Tax-Insurance Procedure Code
- Labour Code
- Code of Private Insurance

3. Main Substantive Acts with economic impact:

- Commerce Law Act
- Ownership Law Act
- Penal Code
- Others (the list is not exhausted because of the limited size of the study and that is why only the basic acts are listed in author’s opinion);

4. Adoption and Termination of Specific Tribunal Jurisdictions

(e.g. the Commission for Protection of Competition which has the jurisdiction as a first instance in dispute procurements)

The definition of the term “reform of the judicial system” must recognize also the frequency of these reforms. Not every amendment of a legislative act could be considered as a reform of the judicial system.

To identify the dynamics of the reforms of the judicial system of Bulgaria during the period 2000-2015, the aforementioned author’s model will be applied:

1. Reform of the Judiciary System Structure Acts:

The main amendments are carried out in **2003**, **2006** and **2007**⁶

2. Reform of the Main Procedure Acts:

The main amendments are carried out in **2006** and **2007**⁷

3. Reform of the Main Substantive Acts with economic impact:

No essential amendments in these acts are observed during the studied period.⁸

4. Adoption and termination of specific tribunal jurisdictions

It concerns to establishment of a new tribunal authority. In **2006** tribunal jurisdictions as a first judicial instance are assigned to the Commission for Protection of Competition, which is a body independent of the judicial system. Its main role is to discuss legal cases, concerning public procurements. Clerks, who are not magistrates, deliver judgments on the cases.⁹

In 2004, which falls in the analyzed period, an issue concerning the establishment of a Commission for Protection of Discrimination is also discussed, but it is not analyzed in the study because this commission is not accepted as a specific tribunal body, but as a government body independent of the judicial system.

⁶ Constitution of The Republic of Bulgaria in its section Judicial System was reformed in:

-2003 about the discharge of magistrates (art.129)

-2006 about the Prosecutor’s office (art.127) and the investigating authorities (art.128);

-2007 about the Supreme Judicial Council (art.130, art.131) and the Inspectorate of Supreme Judicial Council (art.132a);

-Judiciary System Act is reformed fundamentally only once in 2007, when a new one is adopted. The annual partial amendments according to the author could not be considered as a reform.

⁷ -Code of Civil Procedure-new code in 2007

-Penal Procedure Code- new code in 2006

-Administrative Procedure Code-new code in 2006

-Tax-Insurance Procedure Code-new code in 2006

- Labour Code-without any essential amendments in the analyzed period;

-Code of Private Insurance –new code in 2006

⁸ According to the author there are no essential amendments in the Commerce Law Act, Ownership Law Act and the Penal Code

⁹ The amendment is done in 2006 of art.121 of the Public Procurement Act, abrogated in (2004-2016)

According to the study, based on the author's model about the analysis of the amendments of the legislation and the proposed determinants, a "reform of the judicial system" of Bulgaria in the period 2000-2015 has been realized only two times. The first time, was in 2003, and the second time in 2006-2007. The success and effectiveness of this reform could be defined by analysing its relation with the economic growth rate of the country in these years.

2. Correlations and trends of the reforms of the judicial system and the economic growth of Bulgaria

Why Bulgaria ranks 54th among 144 countries in global competitiveness index, 8 years later its membership in the EU, which rank is the same as in 2005 before joining the EU.¹⁰ At the beginning of the analyzed period in 2000 Bulgaria again ranked 55th.¹¹

This means that its competitiveness in the fifteen years period has not changed even when it became member of the EU in 2007. At the same time Bulgaria is far from the 27 developed countries in the EU as well as from developing Panama, Costa Rica and etc.

One of the main reasons is that without a successful reform of the judicial system, including effective protection of property rights and investments, Bulgaria could not be able to improve its competitiveness.

Even the European Commission through the Mechanism of "Cooperation and Verification" shares the opinion that corruption and effectiveness of the Bulgarian judicial system are unreformed fields no matter that the country is a member of the EU since 2007.¹²

According to the ranking of the World Bank about good government of the indicator "Rule of law" during the analyzed period, Bulgaria takes again one of the last positions.

¹⁰ World Economic Forum, (2006), "The Global Competitiveness Report 2006-2007", p.17, ISBN-13: 978-1-4039-9636-7

World Economic Forum, (2014), "The Global Competitiveness Report 2014-2015", Geneva, p.13, ISBN-13: 978-92-95044-98-2

¹¹ World Economic Forum, (2000), "The Global Competitiveness Report 2000", p.11, ISBN 0-19-513820-1

¹² Report from the Commission to the European Parliament and the Council (2015), "On Progress in Bulgaria under the Co-operation and Verification Mechanism", COM(2015) 36 final

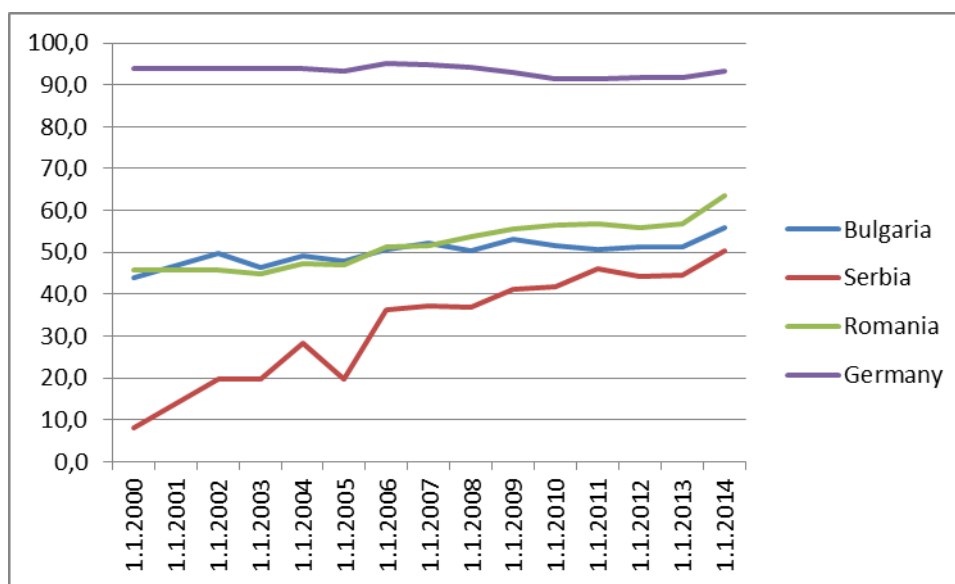


Fig 1: Percentage classification of selected countries in the indicator „Rule of Law“

Source: World Bank, (2015), Worldwide Governance Indicators-Bulgaria

As seen from the figure above, the following conclusions about the percentage classification of selected EU countries in the indicator “Rule of Law” can be made:

First of all, Bulgaria and Romania in 2000 are at the same starting point (a subtle distinction of 2%), as in 2007 Romania considerably moved away Bulgaria and in the end of the period in 2014 it is ahead of Bulgaria with a distinction of 8% and its indicator “Rule of Law” reached 63,5%.

Secondly, during the whole 15 years period, the indicator for Bulgaria is at the same position with a slight increase (1,5%) in 2002. This means that the reforms of the judicial system are not effective. Indeed, in the last year of the period (2014) a growth of 4,5% compared to 2013 is observed. But it is not clear what the reason for this growth is as in the previous 2 to 3 years no significant reforms of the judicial system according to the proposed methodology, are adopted. At the same time through the Mechanism of “Cooperation and Verification” the European Commission has not reported any amendments, except for the preparation of strategic documents with future application (not concerning the analyzed period). According to the figure above, the accession of Bulgaria to the EU in 2007 do not impact the fluctuations of the indicator “Rule of Law”.

Thirdly, Serbia is selected in the graph because it is a neighboring country of Bulgaria and at the same time is not a member of the EU. No matter that, in 2000 Serbia is at almost zero starting point (8,1%), in the whole period the values of its indicator impetuously increase

while at the end of the period in 2014 they reach 50,5% which is almost equal to the values of the indicator for Bulgaria.

Fourthly, Germany is included in the graph because it is a member-state like Bulgaria. Germany is a member of the EU since its establishment and is chosen as a sample to illustrate the best values of the indicator “Rule of Law” of 93%, which corresponds with the high rank of the country in the classification for global competition of the World Economic Forum: 4th rank out of 144 countries. Obviously, the indicator “Rule of Law” is a factor for achieving high or global competitiveness.

Further, the effect of the dynamics of the identified by the author reforms of the judicial system over the economic growth rate of the country will be analyzed. In accordance with the proposed methodology for defining the dynamics of the reforms of the judicial system of Bulgaria, the following four indicators were determined: reform of the Judiciary System Structure Acts; reform of the Main Procedure Acts; reform of the Main Substantive Acts with economic impact and adoption and termination of specific tribunal jurisdictions.

They will be analyzed for the period 2000-2015, together with the presented by the World Bank indicator “Rule of Law” and the economic growth indicator.

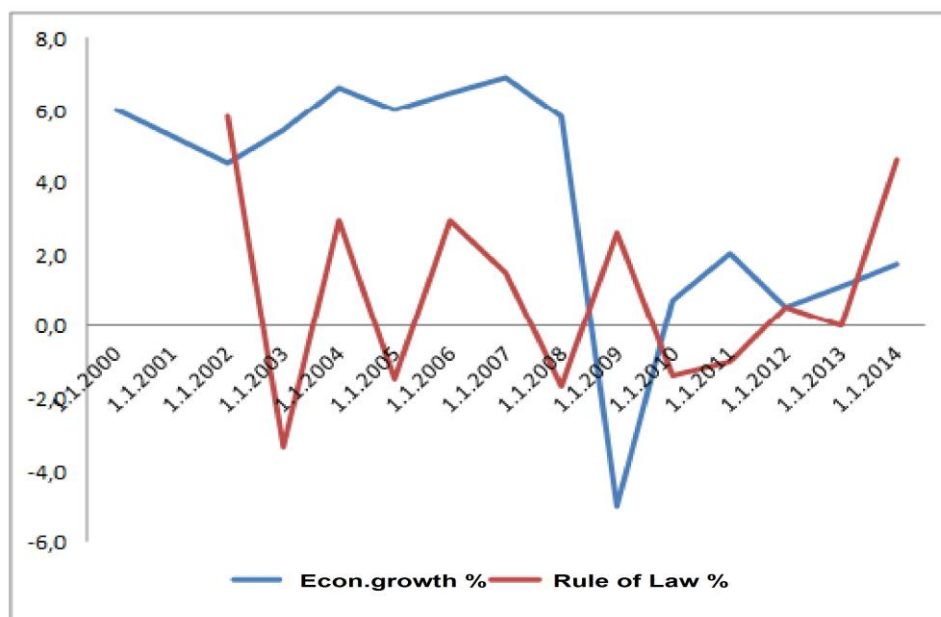


Fig. 2: Rule of Law as a factor of the economic growth

Source: World Bank, (2015), “National accounts data – Bulgaria” and Author’s calculations

As it was presented on Figure 1, during the 15 years period (2000-2015) Bulgaria retains almost the same positions of the indicator “Rule of Law”.

The same results are reported by the author, applying the methodology proposed in the previous section of the study when defining the dynamics of the reforms of the judicial system in Bulgaria.

The identified the reforms of the judicial system in 2003, 2006 and 2007 are not significantly correlated to the economic growth of the country.

These are also the years when Bulgaria took large-scale accession measures to join the EU. According to the current research these measures are not effective and no economic growth is reported.

During the analyzed period a decrease of the economic growth is observed especially in the period 2008-2014. The period after 2008 falls in the time of the global economic crisis but for countries like Poland which is a new member state, the average value of the indicator “Rule of Law” (2000-2015) is 70% and it reported positive economic growth.

Conclusions

The current study confirms the statement that without an effective reform of the judicial system a long-term economic growth could not be achieved in Bulgaria and in countries with transitional economies.

The reasons for this are the following:

First of all, the example of Germany showed that the higher the values of the indicator “Rule of Law”, the better is the rank of the country in the classification of the global competitiveness index.

Secondly, the comparison between Bulgaria and Serbia showed that the EU membership itself does not result automatically in effective justice and trust in the judicial system.

On the third place, the example of Bulgaria showed that even when a significant reform of the judicial system is made, what was identified in the research during 2006 and 2007, when simultaneously are reformed the judicial system structure acts and the main procedure acts, as well as partially reformed the substantive acts, if no trust of the investors and increase of the economic activity is reported, these reforms remain purely formal.

The study found that the main disadvantage of the recent models for analyzing the economic impact of the reform of the judicial system is that it is considered as floating in time, which could be assessed in certain periods of time.

The study proved that the “reform of the judicial system” could be specified as a single action of planned strategic and complex amendments of a group of legislative acts (judiciary

system structure acts; procedure acts and substantive acts) that result in direct and long-term amendment of the functioning of the judicial system.

This helps to identify when the government and the parliament have the will for reform of the judicial system and when they only imitate a reform by insignificantly amending the legislation. This fact is of great importance for countries with transitional and developing economies.

The proposed model could be used in the preliminary phase of the other models which report the effectiveness of the reform of the judicial system. Because, only when the presence of legislative amendments that are reform of the judicial system is identified, then the other indicators, used in other authors' publications could be applied to assess if the reform is successful and effective or not.

The current study could be developed by other researchers:

The current study does not examine the amendment of the legislation, related to fight against corruption as a separate determinant for identification of the reform of the judicial system. The reason is that corruption concerns all authorities out of the judicial system (executive and legislative). In this sense the reforms of the legislation, related to corruption impact indirectly the judicial system. The author thinks that in a large-scale research, both fields must be examined and measured separately as determinants of the economic growth and competitiveness. Despite this, other researchers could include corruption as the fifth determinant in the proposed model by the author and extrapolate with it.

REFERENCE

1. World Bank, (2015), "Productivity in Bulgaria: Trends and Options", Document of the World Bank
2. Esposito G., S. Lanau and S. Pompe,(2014), "Judicial System Reform in Italy-A Key to Growth"//, IMF Working Paper, WP/14/32, International Monetary Fund
3. Stephenson, M., "Judicial Reform in Developing Countries: Constraints and Opportunities" in *Beyond Transition* (Francois Bourguignon & Boris Pleskovic eds., Oxford University Press, 2007).
4. Dam, Kenneth W.,(2006) The Judiciary and Economic Development (October 2006). U Chicago Law & Economics, Olin Working Paper No. 287
5. World Economic Forum, (2014),"The Global Competitiveness Report 2014-2015", p.13, ISBN-13: 978-92-95044-98-2

6. World Economic Forum, (2006), “The Global Competitiveness Report 2006-2007”, p.17, ISBN-13: 978-1-4039-9636-7
7. World Economic Forum, (2000), “The Global Competitiveness Report 2000”, p.11, ISBN 0-19-513820-1
8. Report from the Commission to the European Parliament and the Council, (2015), “On Progress in Bulgaria under the Co-operation and Verification Mechanism”, COM(2015) 36 final
9. Constitution of The Republic of Bulgaria
10. Judiciary System Act
11. Code of Civil Procedure
12. Penal Procedure Code
13. Administrative Procedure Code
14. Tax-Insurance Procedure Code
15. Labour Code
16. Code of Private Insurance
17. Commerce Law Act
18. Ownership Law Act
19. Penal Code
20. Public Procurement Act